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No. 83-665

IN THE

Supreme Court of the United States

October Term, 1983

BUFFALO TEACHERS FEDERATION, et al.,
Petitioners,
v.
GEORGE ARTHUR, et al.,
Respondents.

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* AND BRIEF *AMICUS CURIAE* OF AMERICAN FEDERATION OF TEACHERS, AFL-CIO

IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

The American Federation of Teachers, AFL-CIO, (hereinafter referred to as "AFT") respectfully moves for leave to file the attached brief *amicus curiae* in this case. The AFT has sought the consent of all parties' attorneys to the filing of this brief. Consent has been obtained from counsel for Plaintiffs-Respondents, Plaintiffs-Intervenors-Respondents, and Defendants-Petitioners. The consent of counsel for Defendants-Respondents has been sought but denied, necessitating this motion.

The AFT is a national labor organization which represents more than 580,000 members of both sexes and all races through its 2,000 locals located throughout the United States. Approximately 460,000 AFT members are elementary and secondary teachers, college and university professors, in public and private education.

As exclusive collective bargaining representatives, AFT locals regularly negotiate collective bargaining agreements containing race-neutral seniority-based tenure, layoff and recall provisions. The AFT is committed to the seniority principle as the cornerstone of free collective bargaining and as the foundation of economic justice and academic freedom.

Consistent with its commitment to the seniority principle, throughout its history AFT has championed the principle of equal educational opportunity. AFT has vigorously supported the abolition of legal barriers to school desegregation and faculty and staff integration. Beyond education, AFT has been in the forefront in the struggle to eliminate segregation and discrimination in housing, employment and other spheres of American life.

Out of its dedication to these principles, AFT moves to join and support its fellow teachers of the Buffalo Teachers Federation in their effort to secure this Court's review of the decision of the Second Circuit Court of Appeals in *Arthur, et al.* v. *Nyquist, et al.*, (No. 962, Docket 82-7802, decided July 22, 1983), reported at 712 F.2d 816 (2nd Cir. 1983). AFT participation as *amicus curiae* will provide the Court with the perspective of a national AFL-CIO-affiliated labor union, committed to seniority, free collective bargaining, equal educational opportunity and quality education.

WHEREFORE, AFT respectfully moves this Court for leave to file the brief *amicus curiae*, attached.

Respectfully submitted.

By: /s/ BRUCE A. MILLER
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QUESTION PRESENTED

CAN A FEDERAL DISTRICT COURT PRESERVE THE RACIAL BALANCE OF A TEACHER FORCE IN A SCHOOL DESEGREGATION CASE BY INVALIDATING A BONA FIDE, STATUTORY AND COLLECTIVELY BARGAINED SENIORITY SYSTEM, TO THE DETRIMENT OF INNOCENT NONMINORITY TEACHERS AND TO THE ADVANTAGE OF LESS SENIOR AND NEW TEACHERS WHO ARE MINORITIES, THOUGH NONE OF THESE MINORITY TEACHERS WAS DETERMINED BY THE COURT TO BE A DISCRIMINATION VICTIM?

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INTEREST OF AMERICAN FEDERATION OF TEACHERS, AFL-CIO AND REASONS FOR GRANTING THE WRIT

The interest of the AFT is set out in the foregoing motion for leave to file brief *amicus curiae*.

This case presents the question of the power of a district court to impair the seniority rights of teachers on the basis of race as part of the remedy in a public school desegregation case.

Court-ordered invalidation of bona fide collectively bargained and statutory seniority systems in favor of race-conscious tenure, layoff and recall quotas is drastic action. It is inconsistent with the objective of improving the quality of education for all students, regardless of race. It results in less experienced, and consequently less qualified, faculty members. It defeats the legitimate expectations of senior non-minority teachers — expectations created by state law and free collective bargaining. It penalizes innocent individuals solely because of their race while the wrongdoers — the school systems responsible for racial segregation — pay no penalty. It advantages other individuals who are not discrimination victims, solely because they are minorities. It pits worker against worker on the basis of race and ethnicity. It heightens racial tensions and undermines national labor policy. It creates job insecurity for teachers, making the teaching profession much less attractive to the committed individuals it needs. By exalting group entitlement, it stigmatizes minority teachers and diminishes the opportunities for every individual to achieve his or her potential without regard to ancestry.

The AFT joins its fellow teachers of the Buffalo Teachers Federation in seeking review of the decision below. The question presented calls for the application of equitable, legal and constitutional principles to a situation never addressed by this Court.[1] This question

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[1] In other contexts, this Court has considered a variety of issues arising out of the tension between efforts to remedy discrimination, bona fide seniority systems, and the rights, interests and legitimate expectations of innocent employees. This Court has permitted race-conscious relief which adversely affects the seniority rights of innocents only where necessary to make whole identifiable individual

(*Continued on following page*)

arises in the context of national policy favoring bona fide seniority systems and collective bargaining, public education, and school desegregation. It arises out of tension between the rights of innocent individual teachers and one district court's effort to benefit a class of school children by preserving racial balance in the faculty. It spotlights the unvalidated assumption that faculty racial quotas necessarily have a salutary educational impact, despite their undisputed negative effect on teacher experience, job security, academic freedom and unity.[2]

(*Continued from preceding page*)

discrimination victims — and then only where consistent with traditional principles of equity. *See Franks* v. *Bowman Transportation Co.*, 424 U.S. 747 (1976); *International Brotherhood of Teamsters* v. *U.S.*, 431 U.S. 324 (1977); *American Tobacco Co.* v. *Patterson*, 456 U.S. 63, 74, n. 15 (1982). The application of the principles developed in these cases to the abrogation of seniority rights in a school desegregation case is a significant question, never before addressed by this Court, raised by the instant case.

[2] Just as there is no constitutional right to attend a racially balanced school, *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S 1, 23-25 (1971); *Pasadena City Board of Education* v. *Spangler*, 427 U.S. 424, 433-435 (1976), there is no constitutional right to be taught by racial "role models" or a racially balanced faculty. There is great danger in uncritical adherence to numerical solutions for the complex educational problems raised by school desegregation cases, an issue that may be addressed on review of the instant case.

Similar questions have been addressed by at least two other Courts of Appeals — *Oliver* v. *Kalamazoo Board of Education*, 706 F.2d 757 (6th Cir. 1983); *Morgan* v. *O'Bryant*, 671 F.2d (1st Cir. 1982), *cert. denied*, 103 S.Ct. 62 (1982) — which employ different legal standards and reach different results. The situations that create such questions are likely to repeatedly recur. The AFT believes that this case raises a question of national significance that warrants the attention of this Court.

CONCLUSION

For the foregoing reasons, the AFT asks this Court to review the decision below.

Respectfully submitted,

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